

ABA Pretrial Release Standards

Mark R. DeCaria

Weber County Attorney

What are they?

- A set of ideals or aphorisms designed to standardize the decision to release or detain defendants pretrial in jurisdictions across the country.

Three Major Principles

- Enunciate a policy and presumption favoring release of the accused
- Abolishment of compensated sureties for release (bail bondsmen)
- Establishment of a comprehensive pretrial release service agency

Purposes of Pretrial Release Decision (10-1.1)

- To provide due process to the accused
- To ensure defendant's appearance at all hearings before the court
- To protect victims, witnesses, and the community from threats, danger, and interference

Policy Favoring Release (10-1.1)

- The law favors release of defendants pending adjudication
- Deprivation of liberty is harsh and oppressive
- Can cause economic and psychological hardships
- Impedes ability to prepare adequate defense
- Deprives the family of support

Release Under Least Restrictive Conditions

- Sufficient to:
 - Ensure defendant's attendance
 - To protect community (victims, witnesses, etc.)
- Courts must have an arsenal of alternative release choices

Release on Own Recognizance

- Jurisdictions to adopt procedures to promote O.R. Release
- Pretrial services agency should provide the court with sufficient information to help it make an appropriate release decision

Detention is Exception to Release Policy (10-1.6)

- These standards seek to limit use of detention
- Establish criteria and procedures for detention when defendant is a danger or flight risk
- Inordinate weight should not be given to the nature of the charge

Citations in Lieu of Arrest (10-2.1)

- Mandatory for minor offenses (usually non-violent)
 - Exceptions when Defendant:
 - Fails to identify self
 - Refuses to sign promise to appear
 - Has no ties to the community
 - Has previous failures to appear
 - Is not in compliance with release conditions on other cases (probation or parole)
 - Is likely to re-offend

Use of Summons in Lieu of Arrest (10-3.1)

- Mandatory summons for minor offenses
 - Exceptions:
 - Accused fails to identify self
 - Arrest warrant necessary to locate accused
 - Arrest/Detention necessary to ensure public safety
 - Accused will likely fail to respond to summons
 - Accused has previously failed to appear
 - Accused not in compliance with release conditions on other cases (probation or parole)
 - Accused will continue to offend

Development of Comprehensive Pretrial Services (10-1.10)

- Every jurisdiction should establish pretrial services agency to:
 - Conduct first appearance inquiries
 - Present information to judge
 - Risk of failure to appear
 - Threat to anyone in community
 - Develop and provide appropriate and effective supervision

Development of Comprehensive Pretrial Services (10-1.10)

- Find appropriate facilities for care, custody and supervision of released Defendants
 - Halfway houses
 - Treatment centers
 - Counseling services
- Monitor compliance
- Inform the court of violations of release conditions
- Assist released Defendants in finding employment, medical care, or drug treatment
- Remind Defendants of court dates

Pretrial Services Investigation (10-4.2)

- Interview is voluntary
- Intended solely for a determination of release conditions or options
- Cannot be used against the Defendant except for perjury
 - Does this create a privilege?
 - What about impeachment?
- Used to determine risk of flight or danger to community

Information Included (10-4.2)

- Nature of the charge
- Character, mental condition, family ties, employment, ties to the community, past conduct, history of drug or alcohol abuse, criminal history, record of previous court appearances
- Probation or parole status at time of offense
- Sponsors
- Risk of willful failures to appear
- Threat to the safety of the community, victims, or witnesses

Other Restrictions If Not Released Own Recognizance

- Pretrial Services supervision
- Supervision by any other qualified agency
- Establishment of curfew, protective order, or geographical restrictions
- Electronic Monitoring
- No weapons

Other Restrictions If Not Released Own Recognizance

- No drugs or alcohol
- Drug Court, Diversion program, or Mental Health Court
- Financial Conditions
- Work Release or other part-time custody arrangement

Abolishment of Compensated Sureties (10-1.4(f))

- Consistent with the processes provided in these Standards, compensated sureties should be abolished
 - If financial bail is imposed:
 - Cash or securities of not more than 10% of the bail
 - To be returned at conclusion of case

Release on Financial Conditions (10-5.3)

- Financial conditions:
 - Discriminate against poor and middle class defendants resulting in higher rates of detention (commentary to 10-1.4(f))
 - Other than unsecured bond should be imposed only when no other less restrictive condition of release will ensure appearance
 - Financial conditions should not be set to prevent future criminal conduct
 - To punish or frighten defendant or placate public opinion

Release on Financial Conditions (cont'd)

- If financial conditions are to be used, the Court should select from one of these alternatives:
 - Execution of an Unsecured Bond
 - Execution of an Unsecured Bond accompanied by a cash deposit of 10% of total
 - Execution of a Bond secured by deposit of full amount or by the obligation of qualified, **uncompensated sureties**
- These Standards discourage the use of a predetermined bail schedule according to the nature of the charge.

Pretrial Detention

(10-5.8, 10-5.9)

- Burden on prosecution to demonstrate by “clear and convincing evidence” to prove no condition or combination of conditions of release will ensure:
 - Defendant’s appearance
 - Safety of community
- Judge to consider:
 - Violent nature of crime
 - Violation of prior release restrictions